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February 29, 1956

*See letter to  
Robert E. Hinchey Esq.  
over*

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CONCORD, N.H.

Mr. Ralph V. Gould, Director of Safety  
Motor Vehicle Department  
State House Annex  
Concord, N. H.

Dear Sir:

In your letter of February 15, 1956, you asked whether or not when a tractor becomes involved in an accident on the highways of this state, the owner or operator may be required to observe the provisions of the New Hampshire Responsibility Act.

*2591)*  
The confusion in this regard arises out of the definitions of "motor vehicle," RSA 259:1, XVII, which defines "motor vehicle" as "any self-propelled vehicle not operated exclusively upon stationary tracks, except tractors," RSA (259)1, XXXI, which defines "tractor" as "any self-propelled vehicle designed, or used as a traveling power plant or for drawing other vehicles, but having no provision for carrying a load."

Our Supreme Court has held that a road locomotive or traction engine used to draw cars on the highways, being a vehicle in the sense that it carries the operator and the materials used in its operation is an automobile so as to require its registration. Emerson Troy Granite Co. v. Pearson, 74 N.H. 22.

"The word 'automobile' in its popular sense connotes a 'pleasure vehicle' designed for the transportation of persons on highways. 'Motor vehicle,' more often used as a generic term, has a somewhat broader meaning, and is commonly applied to any form of self-propelled vehicle suitable for use on a street or roadway." American Mutual Liability Ins. Co. v. Chaput, 95 N.H. 200, 202.

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It has been pointed out that the Legislature in 1949 subsequent to the Golding-Keece Company v. Insurance Co. case enacted what is now RSA 268:1, IX, which provided:

"Motor vehicle," any self-propelled vehicle not operated exclusively upon stationary tracks, except farm tractors and crawler type tractors."

This office has no authority to declare invalid the acts of the Legislature. In requiring financial responsibility of owners and operators upon the highways of the State the Legislature has full power, subject only to the limitations of reasonableness and equality. State v. Aldrich, 70 N.H. 391. The idea sought to be made effective by the law is, apparently, that the equitability of a judgment shall be reasonably assured. "This assurance is required of all." Opinion of the Justices, 81 N.H. 566, 570. "Any law seeking . . . requirement of security from those who operate motor vehicles upon the highways . . . must answer the constitutional requirement of reasonableness and equality. . . . Any classification of persons to whom the law applies must be based upon substantial reason. . . . It is doubtful if a law could be sustained if it required security from all those required to secure permits and exempt those who operate without a permit." Opinion of the Justices, 81 N.H. 566, 572.

The New Hampshire Supreme Court said in American Mutual Liability Insurance Co. v. Chaput, 95 N.H. 200, 203, "The exception of tractors from the definition of motor vehicles which first came into the statutes in 1921, is obviously arbitrary," bearing in mind that the Court has said at page 204 of said decision that such an exception would be inconsistent with the intent of the financial responsibility of legislation.

"The organic principle of equality includes within its application a granted privilege as well as a regulated right. Equality of benefit is no less required than equality of burden. Otherwise equal protection is denied, 'Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men.' (Const., Pt. I, art. 10)

"The cases recognize this scope of the doctrine of equality. 'An act, which operates on the rights or property of only a few individuals, without their consent,

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is a violation of the equality of privileges guaranteed to every subject.' Merrill v. Sherburne, 1 N.H. 199, 212. 'And not only is the ordinance a palpable violation of the equality of privilege and of burden guaranteed by the constitution, but it is . . . a denial to the persons upon whom it operates of the equal protection of the laws, within the meaning of the fourteenth amendment of the federal constitution.' State v. Jackman, 69 N.H. 318, 330. 'The settled constitutional right of equal privileges and equal protection under general law rests on incontestable grounds of wisdom and necessity.' Williams v. State, 81 N.H. 341, 352.

'If some may, and others may not, enjoy the privilege, the distinction must be one which the public interest permits. Classification creates inequality unless it reasonably promotes a matter of the general welfare. 'It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground - some difference which bears a just and proper relation to the attempted classification - and is not a mere arbitrary selection.' Gulf & Ry v. Ellis, 165 U.S. 150, 165.

'Under this test, applicable under the State Constitution (State v. Pennoyer, 65 N.H. 113; State v. Griffin, 69 N.H. 1; Opinion of the Justices, 85 N.H. 562, 564) as well as the federal, it is difficult to find other than an arbitrary discrimination in the act.' Rosenblum v. Griffin, 89 N.H. 314, 321.

It is my opinion that the attempted exclusion of farm tractors from the act is unconstitutional. However, until the question is raised in a Court of law and it be judicially determined unconstitutional, it must be presumed in your administration of the act that the Legislature has made a constitutional exemption and it is up to the citizen who feels his rights are impaired or discriminated against thereby to take the matter to the Court for determination.

Very truly yours,

George F. Nelson  
Assistant Attorney General

OFN:W

cc - Frederick N. Clarke, Commissioner  
Motor Vehicle Department